

REQUEST FOR QUALIFICATIONS
to provide
Project Delivery and On-Call Engineering Services

RFQ A08-017

Issued by:

Alameda County Congestion Management Agency

July 16, 2008

RESPONSES DUE:

3:00 PM (PST) August 21, 2008

at the

Alameda County Congestion Management Agency

1333 Broadway, Suite 220

Oakland, CA 94612



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(RFQ A08-017)

INTRODUCTION

The Alameda County Congestion Management Agency (ACCMA) was created in 1991 by a joint powers agreement between Alameda County and all its cities. ACCMA's goals, duties and composition make it easier for local governments to tackle the increasingly complex problem of traffic congestion. ACCMA is responsible for planning, programming, and coordinating Federal, State, and Regional funds for transportation projects within Alameda County.

Currently, the ACCMA is being tasked with implementing the design and construction of important traffic congestion relief projects for the Corridor Mobility Improvement Account (CMIA) administered by the California Transportation Commission (CTC). Alameda County received funding in excess of \$400 million for these projects. CMIA projects on I-80, I-580, I-880, and Route 84, and projects on I-680, as well as various other projects, are expected to be funded within the next five years.

In 2007, based on qualifications submitted to ACCMA in response to RFQ A07-002 and RFQ A07-011, the ACCMA established a list of pre-qualified firms to provide project delivery services. ACCMA now intends to consolidate and update this list of pre-qualified firms providing project delivery services on annual basis to ensure maximum full and open competition. The ACCMA encourages Small Business Enterprises (SBEs), Local Business Enterprises (LBEs) and Disadvantaged Business Enterprises (DBEs) to submit a statement of qualifications and to participate in project delivery. ACCMA will not only pre-qualify firms and consultant teams capable of performing the entire set of responsibilities described below, but will also qualify individual firms qualified for one or more discrete responsibilities. Firms which are already on the pre-qualified list are not required to resubmit a statement of qualifications. However, such firms are invited to update their statement of qualifications and key personnel, if needed, by submittal of a set of qualifications in response to this RFQ.

I. INSTRUCTIONS TO CONTRACTORS

A. Pre-Submittal Conference

A pre-submittal conference will be held on August 6, 2008 at 10:00 AM at the ACCMA offices located at 1333 Broadway, Suite 220, Oakland, CA 94612. All prospective Contractors are strongly encouraged to attend.

B. Examination of Proposal Documents

By submitting statement of qualifications (SOQ), the Contractor represents that it has thoroughly examined and become familiar with the work required under this RFQ, and that it is capable of performing quality work to achieve ACCMA's objectives.

C. Addenda/Clarifications

Explanations or clarifications desired by respondents regarding the meaning or interpretation of the RFQ may be requested orally at the pre-submittal meeting or in advance of the meeting in writing. While this meeting is not mandatory, all firms intending to propose are strongly encouraged to attend. All inquiries pertaining to this RFQ should be emailed to Stephen Haas, Project Manager, at the following email address: shaas@accma.ca.gov no later than 5:00 p.m., August 4, 2008. Response to all questions submitted by the August 4, 2008, deadline that may have a material impact on the proposal will be provided to all attendees of the pre-submittal meeting discussed above, and will also be posted on the CMA website: www.accma.ca.gov. The subject line for questions submitted in writing should include reference to: *Questions - ACCMA RFQ No. A08-017*.

D. Submission of SOQ

All SOQ submittals shall be transmitted with a cover letter. *The person authorized by the firm/team to negotiate a contract with ACCMA shall sign the cover letter and the letter shall include the name, title, address, email address and the telephone number of the individual to whom correspondence and other contacts should be directed during the Contractor selection process. Address the cover letter as follows:*

Frank Furger, P.E., Chief Deputy Director,
Alameda County Congestion Management Agency
1333 Broadway, Suite 220
Oakland CA 94612.

The Contractor shall submit **10 hard copies** and one electronic copy in pdf format of its statement of qualifications in a sealed envelope, addressed as noted above, bearing the Contractor's name and address, and clearly marked as follows:

"SOQ Submittal -ACCMA RFQ No. A08-017"

To be considered for the first set of projects, a firm or team's SOQ must be delivered, in both hard copy and electronic format, no later than 3:00 PM, PST, August 21, 2008. For firms or teams that are unable to meet this deadline, but wish to be added to the pre-qualified list for subsequent projects, the SOQ must be delivered, in both hard copy and electronic format, no later than 3:00 PM, PST, November 19, 2008.

E. Withdrawal of SOQ Submittal

A Contractor may withdraw its SOQ submittal at any time before the expiration of the time for submission of SOQ submittals as provided in this RFQ by delivering to the Chief Deputy Director a written request for withdrawal signed by, or on behalf of, the Contractor.

F. Rights of ACCMA

This RFQ does not commit ACCMA to enter into a Contract, nor does it obligate ACCMA to pay for any costs incurred in preparation and submission of an SOQ or in anticipation of a contract.

ACCMA may investigate the qualifications of any Contractor under consideration, require confirmation of information furnished by the Contractor, and require additional evidence or qualifications to perform the Services described in this RFQ.

ACCMA reserves the right to:

1. Reject any or all SOQ submittals
2. Issue one or more subsequent RFQs and/or RFPs
3. Postpone opening for its own convenience
4. Remedy technical errors in the RFQ process
5. Approve or disapprove the use of particular subcontractors
6. Negotiate with any, all, or none of the Contractors
7. Award a contract to one or more Contractors
8. Waive informalities and irregularities in SOQ

G. Contract Type

Contractors shall be prepared to accept the terms and conditions of ACCMA's standard form contract included as **Attachment B** (Sample ACCMA Contract) hereto. If a Contractor desires to take exception to the Agreement, Contractor shall provide the following information as a section of the Proposal identified as "Exceptions to the Agreement":

1. Contractor shall clearly identify each proposed change to the Agreement, including all relevant Exhibits and Attachments.
2. Contractor shall furnish the reasons therefore as well as specific recommendations for alternative language.

The above factors will be taken into account in evaluating statement of qualifications submittal, exceptions that take substantial exceptions to the Agreement or proposed compensation terms may be determined by ACCMA, at its sole discretion, to be unacceptable and no longer considered for inclusion on the pre-qualified list.

II. SCOPE OF WORK

The work to be performed under contracts based on this RFQ is described in the Scope of Work attached hereto as **Attachment A** and hereby incorporated herein. Not all contracts will include each task listed in the Scope of Work.

III. CONTRACTOR'S MINIMUM QUALIFICATIONS

General Qualifications

1. The Contractor shall demonstrate sufficient experience in and comprehensive knowledge of State of California highway and local roadway project development.
2. The Contractor shall possess knowledge of regulations and codes regarding State of California highway and local roadway project development.

Specific Qualifications and Experience

Fully Qualified Project Development Firms and Teams

Any Contractor project delivery firm or team shall have prior State of California highway project development experience on large-scale highway projects. This experience must include all aspects of highway planning and design including roadway, structural, environmental, geotechnical, intelligent transportation system (ITS), drainage, materials and pavement design, surveys, traffic, landscaping, electrical and signing and striping necessary to prepare complete PS&E design packages ready for advertisement. Contractors must exhibit a track record for the delivery of the project design documents on schedule and value engineered for least cost budget. The qualifications and experience of key personnel from the prime Contractors and any subcontractors shall be provided.

Individual Firms Qualified for Discrete Work Tasks

Specialty transportation planning, environmental and engineering contractors are also encouraged to submit a Statement of Qualifications for one or more Contractor work disciplines included in the RFQ. Firms that are part of one or more team submittals may also submit a separate SOQ listing the firm's individual qualifications. These qualifications will be considered for future project proposal selections. Specialty transportation planning, environmental and engineering subcontractors must have prior experience on Caltrans projects and local roadway projects and have a demonstrated record of successful on time and on budget delivery of products within their specialty design discipline. Caltrans Expenditure Authorization (EA) numbers for projects submitted as references must be provided (if appropriate). Specialty Contractors will be used to assist project delivery teams or provide services for specific tasks on an on-call basis.

List of Potential Project Delivery Team Work Disciplines:

- Structure and/or Civil Roadway
- Environmental
- Materials and Pavement Design
- Geotechnical
- Drainage
- Surveys
- Traffic
- Landscaping
- Electrical
- Signing and Striping
- Right of Way Engineering
- Utility Coordination
- Intelligent Transportation System
- Right of Way Acquisition

IV. EVALUATION AND QUALIFICATION

A. Selection Process Dates:

August 4, 2008: All questions pertaining to this RFQ should be emailed to Stephen Haas no later than 5:00 p.m. Monday, August 4, 2008 at the following email address: shaas@accma.ca.gov. Responses to all material questions received by 5:00 p.m. on this date will be provided at the pre-submittal meeting.

August 6, 2008: A Pre-submittal Meeting will be held at 10:00 a.m. at the ACCMA offices on Wednesday, August 6, 2008.

August 21, 2008: Statement of Qualifications are due no later than 3:00 p.m. on Thursday, August 21, 2008 at the offices of the Alameda County Congestion Management Agency, 1333 Broadway, Suite 220, Oakland, CA 94612, if the firm or team wishes to be eligible for the first set of contracts.

Week of September 15, 2008: If necessary, interviews to determine eligibility for the pre-qualified list for the first set of contracts will be held the Week of September 15, 2008.

November 19, 2008: For firms or teams that are unable to meet the earlier submittal deadline, but wish to be added to the pre-qualified list for subsequent projects, the SOQ must be delivered, in both hard copy and electronic format, no later than 3:00 PM, PST, November 19, 2008. *Late submittals will not be accepted.* Interviews will be scheduled if necessary.

B. Evaluation Criteria: The following criteria will be used to evaluate the SOQ:

- B.1. Qualifications of the Firm: Technical experience in performing work related to project delivery of key team members; experience working with public agencies; record of completing work on schedule; strength and stability of the firm; technical experience and strength and stability of proposed subcontractors; and assessments by client references.
- B.2. Demonstrated understanding of the project delivery and potential problem areas: Project approach, work plan, quality assurance program, understanding of ACCMA and other applicable agency's review process, and experience with similar projects related to project delivery.
- B.3. Staffing and Project Organization: Qualifications of project staff, particularly key personnel, especially the project manager, key personnel's level of involvement in performing related work; logic of project organization; concurrence in the restrictions on changes in key personnel.
- B.4. Schedule and Capacity to Provide Qualified Personnel: Adequacy of labor commitment and understanding of the project phases and deliverables.

C. Evaluation Procedure

A Contractor Selection Panel, which may be made up of staff from ACCMA and other agencies, will review the SOQs submitted. They will then establish a list of pre-qualified firms based on pre-established review criteria, and interview the firms if necessary. The names of the Contractor Selection Panel members will not be made public or otherwise revealed prior to the interviews. The individual or composite rating and evaluation forms prepared by Contractor Selection Panel members will not be revealed.

If interviews are required, approximately thirty-five minutes will be allowed for the oral interview, questions, and answers. The Project Manager must lead the presentation before the Contractor Selection Panel. Interviews if necessary will be conducted on Week of September 15, 2008. Each firm submitting an SOQ by the August 21 deadline is asked to keep this date open. No other interview dates will be provided.

The product of the selection process will be a list of qualified project delivery and on-call engineering firms, as determined by the Contractor Selection Panel. Work will be awarded as projects are released, consistent with the Contractor's specialized qualifications to perform a specific project scope.

D. Award

When the Contractor Selection Panel has completed its work, ACCMA will enter into negotiations for specific projects based on the firm's prior experience and

understanding of the specific projects, experience on similar projects, experience and understanding of the community where the project is located, resource availability, and the ability to meet the project schedule. If for a specific project, negotiations with a firm are ultimately unsuccessful, or if a firm declines the work offered, then negotiations will proceed with another firm from the list.

V. NON-DISCRIMINATION

Contractors shall not discriminate on the basis of race, color, national origin, sex, or physical disability in the performance of ACCMA contracts.

VI. LEVINE ACT

Selected Contractors will be required to disclose on the record any contribution of more than \$250 which they have made to an ACCMA Board Member within the twelve-month period preceding the submittal deadline of this RFQ, and within the twelve-month period preceding any subsequent procurement based on this RFQ. This applies to your company, any member of your team, any agents for you or other team members and to the major shareholders of any closed corporation, which is part of your team. If you have made a contribution which needs to be disclosed you must provide written notice of the date, amount and receipt of the contribution(s) to the ACCMA's Executive Director, Dennis Fay. This information will need to be provided before the ACCMA can approve any contract.

VII. SBE and LBE POLICY

ACCMA has adopted a Small Business Enterprise (SBE) Policy, pursuant to which the ACCMA encourages all prime contractors to utilize qualified SBE subcontractors on ACCMA projects, ACCMA promotes the direct purchase of goods from qualified SBEs by utilizing SBE vendors when such vendors are available and the price of the goods sought is reasonable, and, for professional services contracts, ACCMA seeks the utilization of qualified SBEs when such SBEs are available. All prime contractors are required to report on SBE usage during the term of each contract, using a form provided by ACCMA.

For purposes of ACCMA's SBE Policy, an SBE shall be a "small business" within the meaning of 13 CFR Part 121 and California Government Code Section 14837. In the event that the ACCMA's SBE Policy conflicts with any Federal, State or other funding source's programs, policies, regulations or requirements, ACCMA shall make the SBE Policy consistent with said funding source's programs, policies, regulations and requirements to the extent permissible by law. ACCMA's SBE Policy is neutral as to race, ethnicity, national origin, age, sex, religion, sexual orientation and other protected classes.

ACCMA has also adopted a Local Business Enterprise (LBE) Policy, pursuant to which the ACCMA encourages all prime contractors to utilize qualified LBE subcontractors on ACCMA projects, ACCMA promotes the direct purchase of goods from qualified LBEs by utilizing LBE vendors when such vendors are available and the price of the goods sought is

reasonable, and, for professional services contracts, ACCMA seeks the utilization of qualified LBEs when such LBEs are available. All prime contractors are required to report on LBE usage during the term of each contract, using a form provided by ACCMA.

VIII. DISADVANTAGED BUSINESS ENTERPRISES (DBEs)

As a condition of receiving federal funds (if any), ACCMA has signed an agreement with Caltrans pursuant to which ACCMA has agreed to implement Caltrans' Disadvantaged Business Enterprise (DBE) Program Plan (hereinafter referred to as the DBE Program) as it pertains to local agencies. Caltrans' DBE Program is based on U.S. Department of Transportation (DOT), Title 49, Part 26, Code of Federal Regulations requirements.

IX. INDEMNIFICATION AND INSURANCE REQUIREMENTS

Insurance requirements for this project are set forth in **Attachment B**, Sample ACCMA Agreement for Services, ARTICLE 1 F – Indemnification and G - Insurance.

X. FORMAT AND CONTENT

A. Format

Statement of Qualifications shall be printed, bound, and be: 1) as brief as possible, and 2) not include any unnecessary promotional material. **Ten (10) hard copies and one (1) electronic copy in pdf format of your SOQ submittal are due at the ACCMA offices no later than the time and date specified in Section I. INSTRUCTIONS TO Contractors.**

The SOQ submittal shall not exceed a total of the equivalent of thirty (30) single sided pages. SOQ submittals must consist of letter-sized (8.5" x 11") pages, with the exception of no more than three tabloid-sized (11" x 17") pages. General Information Form, transmittal letter and resumes are excluded from the total page count. Each tabloid-sized page is considered one page for the total page count.

SOQ submittals must be bound. Loose-leaf or binder-clipped SOQ submittals will not be accepted. Font size shall be at least 12 point.

The nature and form of response of the SOQ submittal is at the discretion of those responding, but shall include the information listed below.

B. Content

B.1. General Information: Complete the attached General Information Form (**Attachment C**), and place in the front of all SOQ submitted.

B.2. Transmittal Letter: As discussed under Section I.D above, the SOQ shall be

transmitted with a cover letter expressing interest and commitment to work on any future project. The letter shall specify the contractor work disciplines included in the SOQ and state that the staff proposed are available to begin work on ACCMA contracts. The person authorized by the firm/team to negotiate the contract with ACCMA shall sign the cover letter and the letter shall include the name, title, address and the telephone number of the individual to whom correspondence and other contacts should be directed during the Contractor selection process.

- B.3. Profile of Firm: This section shall include a brief description of the firm's size as well as the local organizational structure. Include a discussion on the firm's financial stability, capacity and resources. Additionally, this section shall include a listing of any lawsuit or litigation and the result of that action resulting from (a) any public project undertaken by the Contractor or by its subcontractors where litigation is still pending or has occurred within the last five years or (b) any type of project where claims or settlements were paid by the contractor or its insurers within the last five years.
- B.4. Qualifications of the Firm: This section shall include a brief description of the Contractor's and subcontractor's qualifications and previous experience on similar or related projects. Description of pertinent project experience shall include a summary of the work performed, the total project cost, the percentage of work the firm was responsible for, the period over which the work was completed, and the name, title, and phone number of clients to be contacted for references. Give a brief statement of the firm's adherence to the schedule and budget for each project.
- B.5. Qualifications of Project Team Members (Resume): This section shall discuss the Project Delivery Team members and their experience in various phases of project delivery. Project team members shall be identified by name, location, specific responsibilities on the project. An organizational chart for the project team and bios for key Contractor personnel shall be included. Key Contractor personnel will be an important factor considered by the Contractor Selection Panel. This section shall include resumes for all Contractor personnel.
- B.6. Exceptions to the Agreement: This section shall include any exceptions the Contractor has taken to **Attachment B - ACCMA Sample Contract**.

ATTACHMENT A

SCOPE OF WORK

The Contractor shall perform a variety of project delivery and on-call engineering services on as needed basis in support of the various project phases including but not limited to project scoping, planning, preliminary engineering/environmental studies, final design, right of way support and utility coordination.

The Contractor list of services may include, but are not limited to the following types of services for project delivery:

- Project Management and Administration - the management of the project from initiation through completion. The services provided include initiation, planning, execution, control, and close out of projects.
- Project Initiation Document (PID) – work involved in the preparation, review, and approval of a Project Initiation Documents, including Project Study Report (PSR).
- Perform Preliminary Engineering Studies and Prepare Draft Project Report – work involved in conducting preliminary engineering studies used in the development of a draft project report. Includes minor survey effort directly related to the project report
- Prepare System Engineering Management Plan (SEMP) and other efforts related to the project.
- Perform Environmental Studies and Prepare Draft Environmental Document (DED) – work involved in the performance of environmental studies needed to determine the environmental impact of a Capital Outlay Project and preparation of the draft environmental document.
- Circulate Draft Environmental Document and Select Preferred Project Alternative – work involved in the circulation of the Draft Environmental Document, obtaining and responding to public comment, and selecting a preferred alternative.
- Prepare Project Report and Final Environmental Document – work involved in the preparation, review, and approval of a Project Report, a Final Environmental Document, and Notices of Determination and / or Records of Decision.
- Prepare Base Maps and Plan Sheets – work involved in the preparation of geometric base maps and functional base plan sheets, including review of existing project information, gathering appropriate mapping, and conducting additional studies. Final products of this activity include distribution of maps for right of

way support and plan sheets to other Consulting Firms and Caltrans functional units.

- Prepare Structures Site Plans – work involved in the preparation of various structure site plans, including site geometrics, contours, relocation of utilities and other surface and underground obstacles.
- Coordinate Utilities – work involved in the identification, positive location (potholing), protection, removal and/or relocation of utility facilities necessary to clear and certify Right of Way. Includes coordination with utility companies and review of utility plans.
- Obtain Permits and Agreements – work involved in obtaining necessary permits and agreements needed for project construction.
- Prepare Preliminary Structures Design Data – work involved in gathering / verifying data needed to begin structures design activities. Sub products of this activity include Structures Preliminary Reports, Foundation Plans, Updated scope of work / estimates for Transportation Related Structures, and Preliminary Geology Reports.
- Prepare Structures General Plans – work involved in the preparation of preliminary plans and related estimates, including structures general plans.
- Perform Right of Way Engineering – work involved in performing Right of Way Engineering work in advance of Appraisal and Acquisition activities. Includes preparing appraisal maps.
- Obtain Right of Way Interests for Project Right of Way Certification – work involved in assuring that the State and local jurisdictions has legal and physical possession and right to enter on all land for the project necessary for deliverance of the Right of Way Certification.
- Prepare Draft PS & E – work involved in the preparation and review of draft roadway plans, specifications and estimates. Includes roadway design and preparation of functional PS & E's. Also includes incorporation of the Draft Structures PS & E into Draft PS & E.
- Mitigate Environmental Impacts and Clean-up Hazardous Waste – work involved in the identification and mitigation of environmentally sensitive or hazardous waste sites as required to construct a capital outlay project. Includes long term mitigation monitoring efforts if necessary, within overall project scope.
- Prepare Draft Structures PS & E – work involved in the development of the final design and preparation of draft structures plans, specifications, and estimate.

Include Foundation Review.

- Prepare Final Structures PS & E Package – work involved in addressing comments on the Draft Structures PS & E and incorporating them into the final structures PS & E EXPEDITE package.
- Circulate, Review, and Prepare Final District PS & E Package – work involved in the circulation and review of the Draft PS & E package. Includes addressing review comments and preparing the Final PS & E package.
- Prepare Contract Documents – work involved in the preparation of contract bid documents. Completion of this activity is the milestone “Ready to List”.

ATTACHMENT B
ACCMA Sample Contract

Contract No: CMA #A08-____
CMA Job No.: _____

Summary of
AGREEMENT
between the
ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY
and

Services to be Performed: Pursuant to Article I, Section A, paragraph 1, and as further described in Appendix A, services provided under this AGREEMENT consist of _____

Compensation: Pursuant to Article I, Section A, paragraph 4(b), and as further detailed in Appendix D, aggregate compensation under the AGREEMENT shall not exceed \$_____. As described in Appendix D, compensation shall be based on hours worked during the preceding month at the approved fully-burdened hourly rates shown on Appendix D, in addition to approved direct costs.

Term: Pursuant to Article I, Section A, paragraph 3, from the date of Notice to Proceed with the services until the completion of the PROJECT pursuant to the Schedule of Work. Pursuant to Article I, Section A, paragraph 22, the services described in the Scope of Work shall be completed on or before _____.

CONSULTANT Authorized Representative: Pursuant to Article I, Section A:

Name: _____

Title: _____

CMA's Project Representative: _____

Required Insurance: Pursuant to Article I, Section G, the following insurance coverages are required during the term of this AGREEMENT:

Comprehensive Liability: \$1,000,000

Professional Liability: \$1,000,000, with deductible/self-insured reserve no greater than \$50,000

Automobile Liability: \$1,000,000

Worker's Compensation: As required by law

AGREEMENT
between the
ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY
and

This AGREEMENT is made and entered into as of the latest date appearing on the signature page below, by and between the ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY, a joint powers agency ("CMA"), and _____, [a _____ (state) _____ corporation/ [a _____ (state) _____ partnership/ [a _____ (state) _____ limited liability company/ [a sole proprietorship], with a place of business at _____, _____ (City) _____, CA ("CONSULTANT").

RECITALS

WHEREAS, CMA has defined and developed the _____ [describe project] ("PROJECT");

WHEREAS, CMA desires to secure [professional services / describe] necessary for said PROJECT; and

WHEREAS, CONSULTANT represents that it possesses the professional qualifications and expertise to provide such services; and

WHEREAS, the cover page of this AGREEMENT is intended to provide a summary of the terms hereof, and shall not take precedence over the specific provisions of this AGREEMENT;

NOW, THEREFORE, it is mutually agreed by and between the parties as follows:

CMA hereby contracts with CONSULTANT and CONSULTANT hereby accepts such contract to perform the services upon the terms and subject to the conditions and in consideration of the payments set forth in this AGREEMENT. CONSULTANT promises, covenants and agrees to diligently pursue the work to completion in accordance with the schedule and under the terms and conditions set forth herein.

ARTICLE I

A. GENERAL.

1. **The PROJECT.** The PROJECT which is the subject of this AGREEMENT is more particularly described in **Appendix A**, "Detailed Scope of Work," attached hereto and by this reference incorporated herein.

2. **Scope of Services.** Except as may be specified elsewhere in the AGREEMENT, CONSULTANT shall furnish all technical and professional services including labor, material, equipment, transportation, supervision and expertise to perform all operations necessary and required to satisfactorily complete the work in **Appendix A**, as further defined in **Appendix D**, "Project Cost Proposal," attached hereto and by this reference incorporated herein.

3. **Term.** The term of the AGREEMENT shall be from the date of Notice to Proceed with the services until the completion of the PROJECT pursuant to the Schedule of Work, to the satisfaction of CMA as evidenced by the Notice of Final Acceptance unless terminated earlier pursuant to **Article I, Section B**, below.

4. Compensation.

a. Subject to the provisions of **Article III**, compensation by CMA to CONSULTANT will be based on hours worked during the preceding month at the approved hourly rates shown on **Appendix D**, in addition to reimbursement for approved direct costs.

b. Total compensation for services to be performed under this AGREEMENT will not exceed \$ _____, and CONSULTANT shall not be obligated to perform additional services beyond the scope of this AGREEMENT or incur costs which would cause this amount to be exceeded, unless and until the AGREEMENT has been formally amended in writing.

c. The aggregate amount was computed based on **Appendices A and D**.

5. **CMA's Representative.** CMA hereby designates its Executive Director to be its representative in administering all matters relative to the AGREEMENT. CMA's Representative may delegate authority for specific matters to other staff members or other consultants.

6. **CONSULTANT's Representative.** CONSULTANT hereby designates _____, _____ *[insert name and title]* to represent CONSULTANT with full authority under the AGREEMENT.

7. **CONSULTANT's Identity and Personnel.** _____ will be the key person for the performance of services under this AGREEMENT.

CONSULTANT is the prime consultant heading a team that includes multiple subconsultant firms. The identity of the firms, their respective areas of responsibility and the key personnel who will work on the PROJECT are identified on **Appendix B, "Key Project Personnel,"** attached hereto and by this reference incorporated herein. Any significant change in responsibilities among such firms, any addition or deletion of a firm (whether working as a joint venture partner or subconsultant), and any change in key personnel may be made only upon prior written approval by CMA.

CONSULTANT and its subconsultants shall notify CMA of any proposed change of ownership or fundamental structure, respectively, in CONSULTANT's firm or any subconsultants' firm. Within 30 days of such notice, CMA shall notify CONSULTANT whether CMA will approve such changed firm to continue providing services under this AGREEMENT or whether CMA will terminate this AGREEMENT or require a substitution of a subconsultant firm. Nothing in this provision shall be construed to limit CMA's right to terminate this AGREEMENT for cause, or without cause as set forth in **Article I, Section B** of this AGREEMENT.

Subcontracts between CONSULTANT and other team member firms and between team member firms and other lower tier subconsultants will be subject to review and approval of CMA's representative.

8. **Preliminary Review of Work.** Where CONSULTANT is required to prepare and submit reports, working papers, etc. to CMA as products of the work described in the Scope of Work, these shall be submitted in draft form, and CMA shall have the opportunity to direct revisions prior to formal submission by CONSULTANT.

9. **Appearance at Hearings.** If and when required by CMA, CONSULTANT shall render assistance at public meetings and hearings to perform its services under the AGREEMENT as may be deemed necessary by CMA.

10. **Responsibility of CONSULTANT.** CONSULTANT shall be responsible for the professional quality, technical accuracy and the coordination of the services furnished by it under the AGREEMENT. Neither CMA's review, acceptance, nor payment for any of the services required under the AGREEMENT shall be construed to operate as a waiver of any rights under the AGREEMENT or of any cause of action arising out of the performance of the AGREEMENT, and CONSULTANT shall be and remain liable to CMA in accordance with applicable law for all

damages to CMA caused by CONSULTANT's negligent performance of any of the services furnished under the AGREEMENT.

11. Inspection of Work. It is understood that authorized representatives of CMA may inspect or review CONSULTANT's work in progress at any reasonable time.

12. Suspension, Delay or Interruption of Work. CMA may suspend, delay, or interrupt the services of CONSULTANT for the convenience of CMA. In the event of such suspension, delay, or interruption by CMA or of Excusable Delays as defined in **Article II, Section C**, equitable adjustment will be made in the PROJECT schedule, commitment and cost of CONSULTANT's personnel and subconsultants, and CONSULTANT's compensation.

13. No Third Party Beneficiaries. This AGREEMENT gives no rights or benefits to anyone other than CMA and CONSULTANT and has no third-party beneficiaries.

14. Legal Action. All legal actions by either party against the other arising from this AGREEMENT, or for the failure to perform in accordance with the applicable standard of care, or any other cause of action, will be subject to the statutes of limitation of the State of California.

15. Survival of Indemnities. Notwithstanding the termination of this AGREEMENT and/or the breach of contract or warranty, fault, tort (including but not limited to torts based on negligence, statute or strict liability), CONSULTANT's obligations of indemnity set forth in **Article I, Section F** and any releases, limitations on indemnity, and any and all limitations on any remedies herein shall survive termination of this AGREEMENT for any cause, and **Article I, Section A, paragraph 10** and **Article I, Section F** of this AGREEMENT shall take precedence over any conflicting provision of this AGREEMENT or any document incorporated into it or referenced by it.

16. Jurisdiction. The laws of the State of California will govern the validity of this AGREEMENT, its interpretation and performance, and any other claims related to it.

17. Severability and Survival. If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision, and this AGREEMENT will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

18. Arbitration. All claims, counterclaims, disputes, and other matters in question, arising out of, or relating to, this AGREEMENT or the breach thereof shall be resolved by final,

binding arbitration, conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association in effect at the date of execution of this AGREEMENT, except that the parties may mutually agree to a different alternative dispute resolution mechanism by jointly executing an agreement in writing describing such alternative mechanism. Demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. If either party refuses or fails to participate in naming an arbitrator or in the arbitration itself, the arbitrator named by the American Arbitration Association or the other party is hereby authorized to decide the dispute based upon the information presented to him/her. All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding hereunder. In any arbitration proceeding hereunder, any arbitrator shall have substantial training and professional experience in the subject matter of the arbitration, but shall not have been employed by a party for at least five (5) years prior to the arbitration proceeding. No person shall be chosen as an arbitrator who has at any time been an employee or consultant of either party. All arbitration hearings shall be held at a mutually agreeable time and location within the City of Oakland, California, unless otherwise agreed by the parties. The decision of the arbitrator shall be final, conclusive and binding on the parties, absent fraud or gross error. The decision of the arbitrator may be entered as a judgment in a court of competent jurisdiction. The parties shall each be responsible for one-half of the arbitrator's fees and expenses. Any attorney-client privilege and other protections against disclosure of confidential information, including any protection afforded by the work product privilege for attorneys that could otherwise be claimed by a party shall be available to and may be claimed by such party in any arbitration proceeding hereunder. Neither party waives any attorney-client privilege or any other privilege against disclosure of confidential information by reason of anything contained in or done pursuant to or in connection with this **paragraph 18**. All arbitration proceedings hereunder may be reported by a certified shorthand court reporter.

19. Attorneys' Fees. Should it become necessary to enforce the terms of this AGREEMENT, the prevailing party as determined by a court or an arbitrator shall be entitled to recover reasonable expenses and attorneys' fees from the other party.

20. Final Acceptance. When CMA determines in its reasonable discretion that CONSULTANT has satisfactorily completed the Scope of Services, CMA shall give CONSULTANT written Notice of Final Acceptance, and CONSULTANT shall not incur any further costs hereunder. CONSULTANT may request this determination when, in its opinion, it has

satisfactorily completed the Scope of Services, and if so requested, CMA shall make this determination within three weeks of such request.

21. Subcontracts. Subcontracts between CONSULTANT and other team firms and between team members firm and other lower tier subconsultants will be subject to review and approval of CMA's representative. Any such subcontracts in excess of \$25,000.00 shall contain all provisions stipulated in this AGREEMENT as applicable to subconsultants.

22. Completion of Services. The services described in the Scope of Work shall be completed on or before _____, unless such date is extended by mutual agreement of the parties. *[Insert date for termination of agreement]*

B. TERMINATION/CANCELLATION.

1. For Convenience. CMA may terminate this AGREEMENT. If CMA terminates the AGREEMENT for the convenience of CMA, CMA shall give CONSULTANT seven (7) days prior written notice. CONSULTANT shall be paid for services performed to the date of termination, to include a pro-rated amount of profits, if applicable, but no amount shall be allowed for anticipated profit on unperformed services. In addition to payment for services performed, CMA shall pay CONSULTANT the allowable costs incurred prior to termination, and other costs reasonably incurred by CONSULTANT to implement the termination, such as, but not limited to, subcontract termination costs and related closeout costs, if any.

2. For Cause. If CONSULTANT fails to fulfill its obligations under this AGREEMENT and CMA decides to terminate this AGREEMENT accordingly, CMA shall give CONSULTANT seven (7) days prior written notice of its intent to terminate the AGREEMENT for cause. If, at the end of the seven (7) day notice, CONSULTANT has not commenced correction of its performance, CMA may immediately thereafter exercise its right of termination.

3. Damages/Compensation. If the termination is due to the failure of CONSULTANT to fulfill its obligations under the AGREEMENT, CONSULTANT will be compensated for that portion of the work which has been completed and accepted by CMA, and for services performed to the date of termination, including a prorated amount of profit, if applicable, but no allowance for anticipated profit on unperformed services. In such case, CMA may take over the work and prosecute the same to completion by contract or otherwise, and CONSULTANT shall be liable to CMA for reasonable costs incurred by CMA in making necessary arrangements for completion of the work by others.

4. **Adjustments.** If, after notice of termination for failure to perform, it is determined by CMA that CONSULTANT had not so failed and CMA nonetheless desires to terminate the AGREEMENT, the termination shall be deemed to have been effected for the convenience of CMA. In such event, adjustment shall be made as provided in **Article I, Section B, paragraph 1.**

5. **Rights and Remedies.** The rights and remedies of the parties provided in this Section are cumulative and not exclusive, and are in addition to any and all other rights and remedies provided by law or other sections of this AGREEMENT.

6. **Waivers.** CONSULTANT, by executing the AGREEMENT, shall be deemed to have waived any and all claims for damages in the event of CMA's termination for convenience as provided in **Article I, Section B, paragraph 1**, except for justifiable costs of termination, including, but not limited to, subcontract termination costs as mutually agreed by CMA and CONSULTANT.

C. REVISIONS IN SCOPE OF SERVICES.

1. **Change Order.** CMA's representative may make changes in or additions to the Scope of Services under the AGREEMENT if such changes are agreed to by CONSULTANT, which agreement shall not be unreasonably withheld, through a written Change Order which does not modify the overall purpose, term or compensation provisions of the AGREEMENT. No changes in the Scope of Work shall cause an increase in cost to CMA unless the change is approved in advance by a written Change Order.

2. **Extra Work.** At any time during the term of the AGREEMENT, CMA may order extra work to be performed by CONSULTANT. Extra work is defined as work which was not anticipated and/or contained in the AGREEMENT and which is determined by CMA to be necessary for the PROJECT. Necessary changes in the description of the Scope of Services, equitable adjustments in allowable costs, fixed fee, maximum price, term and schedule required by the Extra Work Order shall be agreed upon by the parties and incorporated herein through the execution of a written amendment to this AGREEMENT. CONSULTANT shall not perform any work or incur any costs pursuant to any Extra Work Order without prior approval by CMA. CONSULTANT's compensation shall be adjusted due to an Extra Work Order only if it has an impact on costs or terms of the AGREEMENT.

D. OWNERSHIP OF MATERIALS/CONFIDENTIALITY.

1. **Documents.** Except as noted below, deliverables prepared by CONSULTANT under the AGREEMENT, such as plans, drawings, tracings, quantities, specifications, proposals, sketches, diagrams and calculations, relative to the AGREEMENT shall become the property of CMA upon completion of the term of this AGREEMENT whether or not the PROJECT is completed. CMA shall not be limited in any way in its use thereof at any time during or after the term of this AGREEMENT, provided that any such use not within the purposes of the AGREEMENT shall be at the sole risk of CMA, and provided that CMA shall indemnify CONSULTANT against any damages resulting from such use, including the release of this material to third parties for use not intended in the AGREEMENT, and for deliverables that have been changed without CONSULTANT's written approval. All documents shall be provided in both written and electronic format.

2. **Confidentiality.** All ideas, memoranda, specifications, plans, manufacturing procedures, drawings, descriptions, and all other written information submitted to CONSULTANT by or on behalf of CMA in connection with the performance of the AGREEMENT shall be held confidential by CONSULTANT and shall not, without the prior written consent of CMA, be used for any purposes other than the performance of the services under this AGREEMENT. Nothing furnished to CONSULTANT which is otherwise known to CONSULTANT or becomes generally known to the related industry, shall be deemed confidential. CONSULTANT shall not use CMA's name or insignia, photographs of the work, or any other publicity pertaining to the work in any magazine, trade paper, newspaper, or other news medium without the express written consent of CMA. CONSULTANT may use project technical information at will in the demonstration of expertise for purposes of describing project experience to others in the routine conduct of CONSULTANT's business with CMA's prior written consent.

E. CONSULTANT STATUS/SUBCONSULTANTS.

1. **Consultant.** In the performance of the services to be provided hereunder, CONSULTANT is an independent consultant and is not an employee, agent or other representative of CMA.

2. **Assignment or Transfer.** Services to be furnished hereunder shall be deemed to be professional services and, except as herein provided, CONSULTANT has neither the right nor the power to assign, sublet, transfer or otherwise substitute its interest in the AGREEMENT or its obligations hereunder without the prior written consent of CMA.

F. INDEMNIFICATION.

1. **Duties.** CONSULTANT represents and maintains that it is skilled in the technical practices necessary to perform the services, its duties and obligations, expressed and implied, contained herein, and CMA expressly relies upon CONSULTANT's representations regarding its skills and knowledge. CONSULTANT shall perform all services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California.

2. **Responsibilities.** CONSULTANT agrees to defend, protect, indemnify and hold harmless CMA, its officers and employees, from and against any and all liability, claims, suits, loss, damages, costs and expenses (collectively "Claims") to the extent arising out of or resulting from any negligent acts, errors or omissions, recklessness or willful misconduct of CONSULTANT, and its officers, employees, agents or subconsultants in the performance of their services under the AGREEMENT. In the event CMA is found by a court or arbitrator to be partially liable for a Claim, CMA shall reimburse CONSULTANT for its proportionate share of the reasonable costs of defense actually expended, based on its share of liability.

CMA shall provide CONSULTANT an opportunity to cure, at CONSULTANT's expense, all errors and omissions, which may be disclosed during the review of the services performed by CONSULTANT. Should CONSULTANT fail to make such corrections in a timely manner, such corrections shall be made by CMA and CONSULTANT shall pay all costs thereof.

It shall be the responsibility of CONSULTANT to provide the basic insurance requirements indicated in Section G, below.

G. INSURANCE.

1. **Comprehensive Liability.** CONSULTANT shall carry Commercial or Comprehensive General Liability Insurance and maintain aggregate limits of liability sufficient to cover not less than \$1,000,000.00 per occurrence for bodily injury or property damage and Automobile Liability Insurance with combined single limits of not less than \$1,000,000 for bodily injury or property damage. Maintenance of said insurance shall extend throughout the entire term of this AGREEMENT. Such insurance shall add CMA, its officers, employees, agents, and, if applicable other permitting agencies as identified by CMA, while acting within the scope of this AGREEMENT, as additional insureds. Such insurance shall include the following:

- a. All operations including use of all vehicles.

b. Blanket contractual liability on all written contracts, including this AGREEMENT.

c. Personal injury (in lieu of, or in addition to, bodily injury).

d. Use of watercraft, where applicable.

Subconsultants of CONSULTANT shall provide evidence of their own Commercial or Comprehensive General Liability Insurance which meets the above specifications to CMA, or be added to CONSULTANT's policy as additional insured if said policy of CONSULTANT allows such addition.

Notwithstanding the above, in the event a subconsultant, after using its best efforts, is unable to meet the insurance specifications provided in this **Section G, paragraph 1**, CMA, after examining the subconsultant's circumstances, may decide, in its sole discretion, to waive or modify any of the insurance specification requirements for such subconsultant.

2. Errors and Omissions. In addition to the requirements of **Article I, Section G, paragraph 1** above, CONSULTANT shall carry professional liability insurance for errors and omissions in an amount not less than \$1,000,000. Such insurance shall include the following:

a. A deductible or self-insured retention is permissible on this policy, providing that such deductible or self-insured retention shall not exceed \$50,000 per occurrence.

b. Said policy shall include a contractual liability endorsement on all written contracts, including this AGREEMENT.

c. Subconsultants of CONSULTANT providing services of a professional nature, shall provide evidence of their own professional liability insurance which meets the above specifications to CMA, or be added to CONSULTANT's policy as additional insured if said policy of CONSULTANT allows such addition.

Notwithstanding the above, in the event a subconsultant, after using its best efforts is unable to meet the professional liability insurance requirements provided in this **Section G, paragraph 2**, CMA, after examining the subconsultant's circumstances, may decide, in its sole discretion, to modify the professional liability requirements for such subconsultant.

3. Worker's Compensation. CONSULTANT shall carry Worker's Compensation Insurance as required by California Law, covering all work performed by CONSULTANT under

the AGREEMENT, and all of CONSULTANT's personnel performing services under the AGREEMENT.

4. **Certificates.** Insurance certificates evidencing the policies described in this Article I, Section G are to be furnished to CMA and provide for not less than sixty (60) days prior written notice to CMA of any cancellation.

H. PROHIBITED INTEREST.

1. **Solicitation.** CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure the AGREEMENT and that it has not paid or agreed to pay any company or person, other than a bonafide employee working solely for CONSULTANT, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making the AGREEMENT. For breach of violation of this warranty, CMA shall have the right to rescind the AGREEMENT without liability.

2. **Conflict of Interest.** CONSULTANT agrees that, for the term of this AGREEMENT, no member, officer or employee of CMA, during his/her tenure or for one (1) year thereafter, or member or delegate to the Congress of the United States, shall have any direct interest in the AGREEMENT or any direct or material benefit arising therefrom.

3. **Conflict of Employment.** Employment by CONSULTANT of any current officer, executive director or other employee of CMA shall not be permitted even though such employment may be outside of the employee's regular working hours or on weekends, holidays or vacation time. Further, for a period of one year after leaving office or employment, no officer, executive director or other employee of CMA shall, for compensation, act as agent or attorney or otherwise represent CONSULTANT by making any formal or informal appearance by making any oral or written communication before CMA, if the appearance or communication is made for the purpose of influencing administrative or legislative action, or influencing any action or proceeding involving the issuance, amendment, awarding or revocation of a permit, license, grant, entitlement or contract, or the sale or purchase of goods, services or property.

I. AFFIRMATIVE ACTION, SMALL BUSINESS ENTERPRISE POLICY AND LOCAL BUSINESS ENTERPRISE POLICY/, AND DISADVANTAGED BUSINESS ENTERPRISE PROGRAM]. *[Delete the bracketed portion of this section title if this is not a federally-funded contract.]*

1. **Affirmative Action.** In connection with the execution of the AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment because

of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40) or sex. CONSULTANT shall take affirmative action to insure that applicants are employed and that employees are treated during their employment without regard to their race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40) or sex. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination.

2. **SBE Policy.** Pursuant to CMA's Small Business Enterprise (SBE) Policy, CONSULTANT is encouraged to utilize qualified SBE subconsultants to perform a portion of the work described in **Appendix A**, and CONSULTANT shall report on SBE usage during the term of this AGREEMENT using the Request for Payment Forms described in **Article III, Section A, paragraph 1**.

3. **LBE Policy.** Pursuant to CMA's Local Business Enterprise (LBE) Policy, CONSULTANT is encouraged to utilize qualified LBE subconsultants to perform a portion of the work described in **Appendix A**, and CONSULTANT shall report on LBE usage during the term of this AGREEMENT using the using the Request for Payment Forms described in **Article III, Section A, paragraph 1**.

4. *[Delete items 4a-4e, i.e., up to Section J, if this is not a federally-funded contract.]* Caltrans Standard Agreement For Subconsultant/DBE Participation.

a. **Disadvantaged Business Enterprise (DBE) Participation**

i. This AGREEMENT is subject to Title 49, Part 26 of the Code of Federal Regulations entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs" ("49 CFR 26"). Bidders who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.

ii. DBEs and other small businesses, as defined in 49 CFR 26, are encouraged to participate in the performance of agreements financed in whole or in part with federal funds. CONSULTANT and its subconsultants, if any, shall not discriminate on the basis of race, color, national origin, or sex in the performance of this AGREEMENT. CONSULTANT shall carry out applicable requirements of 49 CFR 26 in the award and administration of US DOT-assisted agreements. Failure by CONSULTANT to carry out these requirements is a material

breach of this AGREEMENT, which may result in the termination of this AGREEMENT or such other remedy as CMA deems appropriate.

iii. Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this **paragraph 4a.**

b. Performance of DBE Consultants and other DBE Subconsultants/Suppliers

i. A DBE performs a commercially useful function when it is responsible for execution of the work of the AGREEMENT and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible with respect to materials and supplies used on the AGREEMENT, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, evaluate the amount of work subcontracted, industry practices; whether the amount the firm is to be paid under the AGREEMENT is commensurate with the work it is actually performing, and other relevant factors.

ii. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, agreement, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, the CMA shall examine similar transactions, particularly those in which DBEs do not participate.

iii. If a DBE does not perform or exercise responsibility for at least thirty percent of the total cost of its agreement with its own work force, or the DBE subcontracts a greater portion of the work of the AGREEMENT than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a commercially useful function.

c. Prompt Payment of Funds Withheld to Subconsultants.

i. The CMA shall hold retainage from the CONSULTANT and shall make prompt and regular incremental acceptances of portions, as determined by CMA, of the contract work, and pay retainage to the CONSULTANT based on these acceptances. The CONSULTANT or its subconsultants shall return all monies withheld in retention from a subconsultant or sub-subconsultant within 30 days after receiving payment for work.

satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Federal law (49CFR26.29) requires that any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject the violating CONSULTANT or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by the CONSULTANT, deficient subcontract performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE consultants and subconsultants.

ii. Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this **Paragraph 4.c.**

d. DBE Records

i. The CONSULTANT shall maintain records of materials purchased and/or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. If CONSULTANT is a certified DBE, CONSULTANT shall also show the date of work performed by CONSULTANT's forces along with the corresponding dollar value of the work.

ii. Upon completion of the AGREEMENT, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprises (DBE)," CEM-2402F (Exhibit 17-F in Chapter 17 of the Caltrans LAP), certified correct by the CONSULTANT or the CONSULTANT's authorized representative, and shall be furnished to CMA with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to the CONSULTANT when a satisfactory "Final Report Utilization of Disadvantaged Business Enterprises (DBE)" is submitted to CMA.

iii. Prior to the fifteenth of each month, the CONSULTANT shall submit documentation to CMA showing the amount paid to DBE trucking companies. The CONSULTANT shall also obtain and submit documentation to CMA showing the amount paid by

DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. If the DBE leases trucks from a non-DBE, the CONSULTANT may count only the fee or commission the DBE receives as a result of the lease arrangement.

iv. CONSULTANT shall also submit to CMA documentation showing the truck number, name of owner, California Highway Patrol CA number, and if applicable, the DBE certification number of the truck owner for all trucks used during that month. This documentation shall be submitted on the Caltrans Monthly DBE Trucking Verification, CEM-2404(F) form provided to the CONSULTANT by CMA.

e. **DBE Certification and De-certification Status.** If a DBE subconsultant is decertified during the life of the AGREEMENT, the decertified subconsultant shall notify the CONSULTANT in writing with the date of de-certification. If a subconsultant becomes a certified DBE during the life of the AGREEMENT, the subconsultant shall notify the CONSULTANT in writing with the date of certification. Any changes should be reported to CMA within 30 days.
[Delete items 4a-4e, i.e., up to Section J, if this is not a federally-funded contract.]

J. NOTIFICATION

All notices hereunder and communications regarding interpretation of the terms of the AGREEMENT or changes thereto shall be effected by the mailing thereof by registered or certified mail, postage prepaid and addressed as follows:

CONSULTANT:

CMA:

ALAMEDA COUNTY CONGESTION
MANAGEMENT AGENCY

ATTN: (name)
(address)
(city),

CA (zip)

ATTN: Dennis Fay
Executive Director
1333 Broadway, Suite 220
Oakland, CA 94612-1918

K. AUDIT OF BOOKS AND RECORDS.

CONSULTANT and any subconsultants hereunder shall make available to CMA, its authorized agents (including but not limited to representatives of the state and federal governments), officers and employees, for examination, any and all ledgers and books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or related to the expenditures and disbursements charged to CMA, and shall furnish to CMA, its agents, and employees, such other evidence or information as CMA may require with respect to

any such expense or disbursement charged by CONSULTANT. CONSULTANT and any subconsultants hereunder shall establish and maintain an accounting system and records that properly accumulate and segregate incurred contract costs by line item. The accounting system of the CONSULTANT and all subconsultants hereunder shall conform to Generally Accepted Accounting Principles (GAAP), enable determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices.

The records described in this Section shall be retained by CONSULTANT and any subconsultant hereunder and made available for inspection by CMA and its authorized agents for a period of three (3) years after this AGREEMENT is terminated, or the date of the final payment, whichever is later. The audit to determine final compensation will be accomplished by CMA within one year after completion of the PROJECT.

L. ENTIRE AGREEMENT.

This AGREEMENT constitutes the entire agreement between the parties hereto relating to the PROJECT and supersedes any previous agreement or understanding.

ARTICLE II - SCHEDULE

A. SCHEDULE OF WORK.

CONSULTANT shall conform with the schedule set forth in **Appendix C**, "Milestone Schedule," attached hereto and by this reference incorporated herein, except as otherwise modified by the AGREEMENT. In the event it becomes necessary to modify the Schedule of Work, CONSULTANT will prepare a revised schedule for review and approval by CMA. When a revised schedule has been submitted to and approved by CMA, it will be substituted for **Appendix C** and will become a part of this AGREEMENT. CONSULTANT is responsible for reporting in a prompt and timely manner whenever it appears the established work schedule will not be met, whether or not the reasons for anticipated delay are within CONSULTANT's control.

B. REPORTING.

Monthly progress reports in a form acceptable to CMA, which describe work accomplished, shall be submitted with CONSULTANT's monthly billings. CMA agrees to respond to CONSULTANT's draft report submissions in accordance with the Schedule of Work.

C. DELAY.

Neither party hereto shall be considered in the default in the performance of its duties and obligations under this AGREEMENT with respect to the "Milestone Schedule", to the extent that the performance of any obligation is prevented or delayed by an Excusable Delay as defined herein. Should CONSULTANT's services be delayed by any mutually agreed upon excusable cause, CONSULTANT's schedule for completion of tasks affected by such delay shall be extended as agreed to by CMA. CONSULTANT shall take all reasonable actions to minimize any schedule extensions or additional costs to CMA resulting from such delay. Excusable Delays may include, but are not limited to, acts of God or of the public enemy, acts or failures to act of other agencies or CMA (in either their sovereign or contractual capacity), embargoes, and unusually severe weather. In every case, the failure to perform must be reasonably beyond the control and without the fault or negligence of CONSULTANT.

D. NOTICE OF POTENTIAL DELAY.

As a condition precedent to the approval of an extension of time to complete the established work schedule, CONSULTANT shall give written notice to CMA within seven (7) working days after CONSULTANT knows or should know of any cause or condition which might, under reasonably foreseeable circumstances, result in delay for which CONSULTANT may claim an extension of time.

ARTICLE III – COMPENSATION/PAYMENT

A. INVOICES AND TIME OF PAYMENT.

1. For all services described in **Article I** and **Appendix A**, CONSULTANT shall submit an itemized monthly invoice to CMA which includes all applicable Request for Payment Forms and supporting documentation required therefor. The current CMA Request for Payment Instructions and Forms are included in **Appendix E**, "Request for Payment Instructions and Forms," attached hereto and by this reference incorporated herein.

2. Within thirty (30) days after receipt of a valid and complete invoice from CONSULTANT (including all required documentation), CMA shall pay CONSULTANT the amount due for all services rendered during the invoice period, except as otherwise provided in this **Section A**. Invoices and supporting documentation must be legible and reproducible. Any invoices or supporting documentation which are illegible, incomplete or inaccurate will be returned to CONSULTANT for clarification and/or completion.

3. CMA shall withhold ten (10%) of each progress payment referred to in paragraphs 1 and 2 above. The ten percent retention shall be released pursuant to paragraph 7 below. *[Delete this paragraph if retention is not required.]*

4. If CMA disputes any portion of the amount due to CONSULTANT, it may, at its sole discretion, withhold payment up to 150% of the disputed amount pending resolution of the dispute. If any amount is wrongfully withheld or not paid to CONSULTANT on a timely basis, CMA shall pay to CONSULTANT 1.5% per month for the improperly withheld amount for each month which payment is wrongfully withheld or not paid. In any action for the collection of amount withheld in violation of this provision, the prevailing party shall be entitled to reasonable attorney's fees and costs.

5. CONSULTANT agrees that within twenty (20) days of receipt of payment from CMA, CONSULTANT shall pay to its subconsultants all amounts due from such payment, subject to such legal requirements under federal or state law regarding withholding of disputed payments and applicable penalties. *[If this is a federally funded contract, change twenty (20) to ten (10) above]*

6. CMA may, on occasion, request reasonable documentation for certain expense items. In such instances, payment for all other amounts in the invoice for which additional documentation is not required will be made.

7. Upon CMA's Final Acceptance pursuant to Article I, Section A, paragraph 20, CONSULTANT shall submit a final invoice to CMA and request the final retention payment. CMA shall make final retention payment to CONSULTANT within 45 days of receipt of billing of the amount due. Final Payment shall be subject to the provisions of paragraphs 1 and 4 above with regard to CMA's right to withhold disputed payments, CONSULTANT's rights to 1.5% payment on wrongfully withheld or untimely payment, any prevailing party's reasonable legal fees and costs and payments to subconsultants.

8. CONSULTANT agrees that the cost principles set forth in Title 48 CFR, Chapter 1, Part 31 (Cost Principles and Procedures) shall be used to determine the allowability of individual cost items, except that travel and subsistence costs will be reimbursed in accordance with California Department of Personnel Administration guidelines for non-exempt State employees. Any costs for which payments have been made to CONSULTANT which are determined by subsequent audit to be unallowable under these cost principles and guidelines, including but not limited to indirect costs reimbursed as part of, or otherwise included within, CONSULTANT's or

its subconsultants' fully-burdened billing rates, are subject to repayment by CONSULTANT to CMA.

9. Subconsultant compensation and direct costs directly attributable to the performance of the services required by this AGREEMENT shall be reimbursed either at a unit rate or at actual cost invoiced to CONSULTANT as specified on **Appendix D**. Costs not specifically identified on **Appendix D** will not be separately reimbursed but will instead be considered to be included in the fully burdened hourly rates set forth on **Appendix D**.

10. CONSULTANT agrees to comply with federal procedures in accordance with Title 49 CFR, Part 18 (Uniform Administrative Requirements for Grants and Agreements with States and Local Governments).

11. If any subconsultant provides services pursuant to this AGREEMENT, the agreement with said subconsultant shall contain a clause to the effect that the provisions of **paragraphs 8 and 10** above shall apply to said subconsultant.

B. SUSPENSION OF WORK.

In the event payment for services rendered has not been made within forty-five (45) days from the receipt of the invoice for any uncontested billing, CONSULTANT may, after giving fifteen (15) days written notice and without penalty or liability of any nature, suspend all work on all authorized services specified herein. Upon receipt of payment in full for services rendered, CONSULTANT will continue with all authorized services. Payment of all compensation due CONSULTANT pursuant to this AGREEMENT shall be a condition precedent to CMA's use of any of CONSULTANT's professional service work products furnished under this AGREEMENT.

ARTICLE IV - OBLIGATIONS OF CONSULTANT

A. AUTHORIZATION TO PROCEED.

CONSULTANT will not begin work on any of the services described in **Article I** until CMA directs it in writing to proceed.

ARTICLE V - OBLIGATIONS OF CMA

A. CMA-FURNISHED DATA.

CMA will provide to CONSULTANT all relevant technical data in CMA's possession, including, but not limited to, previous reports, maps, surveys, borings, and all other information

relating to CONSULTANT's services on the PROJECT. CONSULTANT will reasonably rely upon the accuracy, timeliness, and completeness of the information provided by CMA.

B. ACCESS TO FACILITIES.

CMA will make its facilities reasonably accessible to CONSULTANT as required for CONSULTANT's performance of its service.

C. TIMELY REVIEW.

CMA will examine the studies, reports, sketches, drawings, specifications, proposals, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, and other consultants as CMA deems appropriate; and render, in writing, decisions required of CMA in a timely manner.

D. PROMPT NOTICE.

CMA will give prompt written notice to CONSULTANT whenever CMA observes or becomes aware of any development that affects the scope or timing of CONSULTANT's services, or any defect in the work of CONSULTANT or its subconsultants.

ARTICLE VI - APPENDICES, SCHEDULES AND SIGNATURES

This AGREEMENT, including its Appendices, constitutes the entire agreement, supersedes all prior written or oral understandings, and may only be changed by a written amendment executed by both parties.

The following Appendices are hereby made a part of this AGREEMENT:

Appendix A: DETAILED SCOPE OF WORK

Appendix B: CONSULTANT AND SUBCONSULTANT FIRMS KEY PROJECT
PERSONNEL

Appendix C: MILESTONE SCHEDULE

Appendix D: PROJECT COST PROPOSAL

Appendix E: REQUEST FOR PAYMENT INSTRUCTIONS AND FORMS

IN WITNESS WHEREOF, CMA has by order caused the AGREEMENT to be subscribed by the binding authority of CMA and CONSULTANT has caused the AGREEMENT to be subscribed on its behalf by duly authorized signees.

CONSULTANT:

By: _____
Name: _____
Its: _____

Date: _____

CMA:

ALAMEDA COUNTY CONGESTION
MANAGEMENT AGENCY

By: _____
Dennis Fay, Executive Director

Date: _____

Recommended For Approval

By: _____
Name/ Title

Reviewed as to Budget/Financial Controls

By: _____
G. Richard Swanson
Director of Finance and Administration

Approved as to form and legality:

Wendel, Rosen, Black & Dean LLP
Legal Counsel to CMA

APPENDIX A
to the
AGREEMENT
between the
ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY
and

DETAILED SCOPE OF WORK

APPENDIX B
to the
AGREEMENT
between the
ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY
and

CONSULTANT AND SUBCONSULTANT
FIRMS KEY PROJECT PERSONNEL

APPENDIX C
to the
AGREEMENT
between the
ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY
and

MILESTONE SCHEDULE

APPENDIX D
to the
AGREEMENT
between the
ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY
and

PROJECT COST PROPOSAL

[Add language describing the basis of compensation, and revise the Agreement and/or the Summary Page as necessary to insure there are no conflicts.]

INSTRUCTIONS FOR PREPARING A COST PLUS FIXED FEE

COST PROPOSAL

The consultant shall provide a separate cost proposal sheet for each task (milestone) plus a summary cost proposal sheet which totals all the task (milestone) sheets.

If any subconsultant's are anticipated, a separate cost proposal sheet for each subconsultant's portion each task is required. Each subconsultant's cost proposal shall follow the same format as stipulated for the prime consultant.

SUMMARY SHEET INSTRUCTIONS

The Consultant must specify the employees who will work on the project. This will assist both the audit and project management since the Contract Manager knows who will participate in the project. In addition, the actual hourly wage rates can be verified by employee.

For the team members at the classification level of Professional/Supervisor, the specific employee's name and classification must be provided.

Where a specific employee is named, provide the actual hourly wage rate and the number of estimated hours to be worked by that employee.

Where only the classification is listed provide the average hourly wage rate for that classification as well as the hourly salary range for the classification.

Provide as subtotal of the estimated number of hours and corresponding direct labor costs.

If salary increases are anticipated during the contract period, provide the total dollar amount of the estimated increase. On a separate sheet provide the estimated percentage increase per classification for the anticipated salary increase.

Provide the fringe benefit, overhead and general and administrative percentages to be applied to the allocation base. (Direct labor is the allocation base) Calculate the fringe benefit, overhead and general and administrative dollar costs by multiplying their respective percentage against the Direct Labor Costs identified on the Summary Sheet. Provide the combined dollar amount of the Total Indirect Costs as a subtotal line item on the Summary Sheet.

Provide the percentage and dollar amount proposed for the fee. The Consultant should be aware that the fee percentage is subject to negotiation.

Provide a itemized listing of anticipated Other Direct Costs. Show the estimated quantities and unit prices for each item. Provide a combined dollar amount for all proposed subconsultants.

Provide the total dollar amount for each task. On the summary sheet shoe the totals of each task as well the grand total for the entire contract.

Alameda County Congestion Management Agency

COST PLUS FIXED FEE COST PROPOSAL: SUMMARY SHEET

Project Name: _____

Date: _____

Consultant Name: _____

A. LABOR

1. Direct Labor

(For all personnel to be utilized on the project)

Classification/Job Title	Hours	Hourly Rate	Total
--------------------------	-------	-------------	-------

Name, if known		@	\$
----------------	--	---	----

Subtotal: _____ Hours

Subtotal: Direct Labor Costs \$ _____

2. Fringe Benefits

(As a % of Direct Labor Costs)

Rate _____ %

\$ _____

Total Labor Costs \$ _____

B. OVERHEAD

(As a % of Direct Labor Costs)

_____ %

\$ _____

C. GENERAL AND ADMINISTRATIVE

(As a % of Direct Labor Costs)

_____ %

\$ _____

Total Indirect Costs \$ _____
(Total of B, and C)

D. FIXED FEE (Profit)

(Not to exceed 10% of the total of A, B, and C)

\$ _____

E. DIRECT COSTS

Travel \$ _____

Equipment and Supplies (Itemize) \$ _____

Subcontractor Costs (attach detailed cost estimate for each subcontractor) \$ _____

Other (Itemize) \$ _____

Total Direct Costs \$ _____

TOTAL PROPOSED PROJECT COST \$ _____

COST PLUS FIXED FEE (CPFF)

DEFINITIONS:

DIRECT LABOR (Hourly Rate): An individual's annual salary or compensation divided by 2080.

FRINGE BENEFITS: Any nonwage payment or benefit to an employee in addition to salary. Examples include: vacation, sick leave, holidays; company paid life, health, dental and vision insurance plans, if provided; retirement plans, subsidized cafeteria plans, company cars, worker's compensation, etc.

OVERHEAD EXPENSES: Those expenses incurred through the provision of an office or offices in support of the services provided. Examples include rent, utilities, office maintenance, general telephone, and any equipment rental or leases associated with general office support services.

GENERAL AND ADMINISTRATIVE EXPENSES: Those personnel and other expenses associated with supporting the services being provided. Examples include accounting, human resources, administrative and/or clerical services, computer support, copying and mailing services not specifically incurred in support of a project.

FIXED FEE (Profit): For CPFF contracts, the fee shall not exceed 10 percent of the contract's estimated cost, excluding fee.

APPENDIX E
to the
AGREEMENT
between the
ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY
and

REQUEST FOR PAYMENT INSTRUCTIONS AND FORMS

Note — This introductory paragraph and each instance of bracketed text [like this] throughout this document should be reviewed prior to distribution to CMA Counsel and/or the Consultant. Each bracket represents a location where a choice needs to be made. (i) Irrelevant text and surrounding brackets should be deleted; (ii) placeholder text and surrounding brackets should be replaced with real language, and (iii) brackets surrounding relevant material should be deleted without affecting the text. Note also that this Agreement contains provisions regarding DBEs that need to be deleted if this does not involve a federally-funded project.

ATTACHMENT C

GENERAL INFORMATION FORM

(To be completed by the Contractor and placed at the front of your SOQ)

Legal Name of Firm

Date

Street Address

Telephone Number

City/State/Zip

Firm's Fax Number

Type of Organization

(Corporation, Sole Proprietorship, Partnership, etc.)

Business License (documented)

Taxpayer ID Number (Federal)

Name and Title of Project Manager

Name, Title, and Phone Number of Person Project Correspondence should be directed to:

Contractor Work Disciplines: Project Delivery Team ☐ Individual Firm ☐

Sub Contractor Information

Firm Name(s)

Address

Contact Name/Phone Number

Email

Signature, Name and Title of Person Signing